

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

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CC Docket No. 98-147

Comments of
Communications Workers of America

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I. Introduction and Summary

The Communications Workers of America (CWA) is a labor organization representing more than 630,000 workers in telecommunications, broadcasting, cable television, publishing, and other public and private sector industries. The majority of CWA members work for firms providing voice, video, data, and text telecommunications and information services over wireline and wireless technologies in the local and long distance markets. CWA members have an interest in Commission rules that create a level playing field upon which firms compete to provide advanced telecommunications capabilities to all Americans and that protect workers' employment standards and career opportunities within this dynamic industry.

CWA has long supported the goal of the Telecommunications Act of 1996 ("the Act") to provide not only affordable, quality telephony but also advanced telecommunications capabilities to all Americans. As such, CWA supports the goal of Section 706 which instructs the Commission to utilize "regulating methods that remove barriers to infrastructure investment" as a means to "encourage deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."¹

The 1996 Act makes competition the driving force to achieve this policy goal. However, in the two and one-half years since passage of the Act, market forces have not driven significant

¹ Telecommunications Act of 1996, P.L. No. 104-104, § 706 (1996), 110 Stat. 153, *codified at* 47 U.S. C. § 157.

investments in technologies capable of providing advanced telecommunications to all Americans. Scott Cleland, telecommunications analyst for the Legg Mason Precursor Group, in recent testimony before the Senate Anti-Trust Subcommittee provided a short-hand explanation for this: "Capital Goes Where it is Welcome." Cleland noted that the Commission's pricing policies and rules for unbundling and resale have discouraged investment in the only ubiquitous network that serves all Americans, the public switched telephone network.

The cold reality is that *deployment* of new technologies for tens of millions of Americans would cost tens of billions of dollars...

Regulators are powerfully discouraging technology deployment by incumbents - the only market players with facilities currently in place and with the financial capability to tackle the task of providing more bandwidth to tens of millions of American consumers.

By forcing deep discounts of incumbent's networks not based on actual costs but on the forward-looking costs regulators want them to be, regulators powerfully discourage deployment of new technologies by everyone concerned. Why should a competitor invest capital if they can lease the incumbents' network without risk at a lower cost than even the competitor could build it for? Why should an incumbent invest to upgrade its plant if it will be forced to resell it for less than it costs to provide it?

...Stimulating resale competition clearly is more prized by regulators than investment in bandwidth for consumers.²

The NPRM in this proceeding proposes an alternative option for incumbent local exchange carriers (LECs) to provide advanced services, an option that the Commission presumably believes will provide incumbent LECs a way out of these investment disincentives. The NPRM

² Scott Cleland, Legg Mason Precursor Group Research Technology Team, Testimony before the Senate Antitrust Subcommittee of the Committee on the Judiciary, May 19, 1998, 1,4.

proposes that if an incumbent LEC provides advanced services through a separate affiliate (an “advanced services affiliate”), the advanced services affiliate would not be deemed an incumbent LEC and therefore would not be subject to the Act’s 251(c) unbundling and resale obligations.³

The “advanced services affiliate” proposal, however, would not reduce the investment disincentives that the Commission’s pricing and interconnection rules have created. Under the Commission’s proposal, an incumbent LEC will still be under the obligation to provide competitors with all network elements that it offers to its own advanced services affiliate. In addition, the NPRM’s seven proposed separation requirements impose duplicative costs and barriers to integrated provision of services upon the incumbent that competitors purchasing unbundled elements or wholesale services for resale would not have. Thus, the advanced services affiliate option would create an unlevel playing field among carriers competing to provide advanced services.

Furthermore, the NPRM’s proposed requirement that the incumbent and its advanced services affiliate have separate “employees”⁴ could result in the unintended consequence of reduced career opportunities and lower employment standards for many workers in the industry. As technologies change in this dynamic industry, workers must be assured of the opportunity to train for and to transfer to jobs involving the new technologies. Structural separation requirements

³ Memorandum Opinion and Order and Notice of Proposed Rulemaking, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (rel. August 7, 1998) 85-6 (hereinafter *NPRM*).

⁴ *Id.*, 96.

imposed to ensure non-discrimination and proper cost allocation should not serve as a barrier to workers' employment security and career opportunities.

For these reasons, CWA does not believe that the NPRM's advanced services affiliate proposal will remove the "barriers to infrastructure investment" and "encourage deployment on a reasonable and timely basis of telecommunications capability to all Americans," as required in Section 706.

However, in the event that the Commission concludes that an advanced services affiliate is a viable pathway to relieve incumbent LECs of Section 251(c) obligations, CWA believes that the Commission can ensure nondiscrimination and proper cost allocation through less onerous structural separation requirements than those proposed in the NPRM.⁵ Specifically, CWA believes that accounting safeguards can adequately address the Commission's concerns concerning cross subsidization of the costs for installing, maintaining, and operating advanced services by occupational employees.

At a minimum, CWA proposes that the Commission adopt rules that protect employees' transfer rights, with guarantees that no employee shall suffer reduction in wages, benefits, or terms and conditions of employment as a result of the structural separation requirement.

⁵ *Id.*, 96.

II. The Advanced Services Affiliate Proposal Would Impose Duplicative and Inefficient Costs that Would Serve as Barriers to Deployment of Advanced Telecommunications to all Americans

The NPRM describes seven structural and nondiscrimination requirements that an advanced services affiliate must meet in order not to be deemed an incumbent LEC.⁶ These requirements impose duplicative operational and personnel requirements upon the incumbent LEC, and inhibit the incumbent LEC from taking advantage of the economies of scale and scope inherent in integrated operations. As the Commission recognized in its Computer III inquiry, structural separation

imposes opportunity costs by discouraging the BOCs from designing innovative enhanced services that utilize the resources of the public switched network. Such innovation losses, resulting from the physical, technical, and organizational constraints imposed by the structural separation requirements, directly harm the public, which does not realize the benefits of new offerings.⁷

Given the high costs and market uncertainties involved in deployment of advanced telecommunications to the mass market, structural separation requirements serve as barriers to achieving the objective of Section 706, the deployment of advanced telecommunications technologies to all Americans.

⁶ NPRM, 96.

⁷ Computer III Phase I Order, 104 FCC 2d 958, 1007, 89. *See also* In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, Further Notice of Proposed Rulemaking, FCC 98-8 (rel. January 30, 1998), 56.

While CWA believes that the separate affiliate requirement would impose inefficiencies and artificial barriers to investment in what is essentially one public switched network, CWA focuses in these comments on two requirements identified in Paragraph 96 of the NPRM that directly affect workforce deployment. In the first requirement, the NPRM proposes (among other conditions) that the “incumbent may not perform operating, installation, or maintenance functions for the affiliate.”⁸ In the fourth requirement, the NPRM proposes that the incumbent and advanced services affiliate must have separate “employees.” (We do not address the condition, also proposed in the fourth requirement, that the incumbent and affiliate must have separate officers and directors.)⁹

Because next-generation advanced services deploy digital technology over the current telephone network, a requirement that the incumbent and its advanced services affiliate use different employees for “operating, installation, and maintenance” functions would create duplicative inefficiencies at best, and absurd workforce deployment at worse. Customers would experience delays in installation and repair as the incumbent and advanced services affiliate alternate as they dispatch technicians to install or troubleshoot only “their” technology.

For example, under the Commission’s proposed rules, at least two (and possibly more) technicians would be required for a simple ADSL installation that today takes one technician.

⁸ *NPRM*, 96.

⁹ *Id.*, 96.

The incumbent technician would first test the signal at the terminal. Then, the advanced services affiliate technician would come out to install the modem/splitter on the side of the house. If the advanced services affiliate then discovers trouble in the line, this would require another dispatch of an incumbent technician.

Even greater inefficiencies would result from the Commission's proposal regarding repair calls. Resolving a trouble report from an ADSL customer could require double, triple, or even quadruple dispatch. Rather than one network technician sequentially testing the various possible sources of trouble, the incumbent LEC and the advanced services affiliate would have to dispatch different employees to troubleshoot only "their" equipment. The sequence might look like this: 1) an incumbent LEC employee tests the loop; 2) an advanced services affiliate employee checks the xDSL modem/splitter on the side of the building; 3) an advanced services affiliate employee troubleshoots the DSLAM located in either the remote terminal or central office (depending on its location); 4) an incumbent LEC employee troubleshoots any problem in the central office or remote terminal switch. It might even be necessary to double dispatch an incumbent and an advanced services affiliate employee to troubleshoot the same equipment (some new network interface devices (NID), for example, have xDSL modem/splitters built in, so the incumbent employee would check the NID for POTs trouble and the advanced services affiliate would check the modem/splitter for the data line).

One might argue that this concern is not new and that the Commission has dealt with this issue ever since the days of divestiture when customer premise equipment (CPE) and inside wire were

deregulated. But there is an important difference here. Electronics that expand the bandwidth over the local network are closely integrated with the network itself. Installation and maintenance functions cannot be easily separated without creating the inefficiencies and potential damage to network reliability described above. Bifurcating responsibility between employees responsible for the local loop network and employees responsible for the advanced services (such as the electronics necessary for xDSL technology) blurs the fact that problems in one part of the network inevitably affect another part of the network.

Thus, CWA believes that the advanced services affiliate option would not achieve the objectives of Section 706 to “remove barriers to infrastructure investment” and to “encourage deployment on a reasonable and timely basis of telecommunications capabilities to all Americans.”

However, in the event that the Commission concludes that the advanced services affiliate option is a viable pathway to encourage the deployment of advanced telecommunications capabilities by incumbent LECs, CWA believes that the Commission can protect against discrimination and cross subsidization while at the same time reducing the network inefficiencies cited above by adopting less onerous structural separation requirements than those proposed in paragraph 96 of the NPRM. Specifically, CWA recommends that the Commission adopt accounting safeguards to ensure that occupational employees document the time they spend performing operating, installation, or maintenance functions on advanced services. Such accounting safeguards strike the proper balance in addressing the Commission’s concerns regarding cross-subsidization and discrimination, while reducing the costs to network reliability, efficient delivery of services, and

customer frustration and confusion. In addition, they would ensure that the separate affiliate option does not result in barriers to worker employment security or career opportunity, as we discuss in Section III below.¹⁰

The Commission also seeks comment (paragraph 99) on whether any separation and other safeguards should sunset after a certain period of time. In the event the Commission imposes structural safeguards, CWA believes that they should sunset at the same time that the statutorily-mandated section 272 requirements sunset with respect to the BOCs' provision of in-region interLATA services.

III. Separate Affiliate Requirements Should Not Result in the Unintended Consequence of Reduced Career Opportunities and Lower Employment Standards for Workers in the Industry.

As technologies change in this dynamic industry, workers must be assured of the opportunity to train for and to transfer to jobs involving the new technologies. The Commission must ensure that structural separation requirements designed to protect against discrimination and cross-subsidization do not have the unintended consequence of blocking workers' employment security

¹⁰ CWA also sees merit in the proposal by Ameritech to adopt the separation requirements in the *Competitive Fifth Report and Order*, as modified by the *LEC Classification Order*. Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, March 5, 1998, 18-22. The *Fifth Report and Order* requires an independent LEC affiliate seeking nondominant treatment providing in-region, interstate, interexchange services to 1) maintain separate books of account; 2) not to own joint transmission and switching facilities with the LEC; and 3) to acquire any services from its affiliated exchange companies at tariffed rates, terms and conditions. (We would add "at negotiated rates, terms and conditions"). See *also* NPRM, 85.

and career opportunities as employment opportunities shift from work on “old” voice networks to work on the “new” data networks.

Recognizing the changes in the industry, CWA has negotiated agreements with many of our incumbent LEC employers to provide priority transfer rights to qualified employees who seek career opportunities working for a different subsidiary of the corporate parent. These agreements typically require the employer to give priority to transfer requests from qualified employees before that subsidiary hires off the street. In some cases, the transfer agreements protect transferring employees from reductions in pay and benefits during a designated transition period.

CWA’s proposal that the Commission adopt accounting safeguards to ensure that occupational employees document time spent performing operating, installation, or maintenance functions on unregulated advanced services would ensure that the Commission’s rules do not interfere with these agreements, nor impose unintended barriers to employees not covered by such agreements as they seek job opportunities working on the new data networks.

In paragraph 113 of the NPRM, the Commission seeks comment on issues relating to transfer of assets from an incumbent to an advanced services affiliate, including employee transfers. At a minimum, the Commission should make clear that employees retain transfer rights across corporate affiliates. Such transfer rights do not expire after the affiliate has been established, but continue throughout the life of the affiliate, and include the right to transfer from the incumbent

to the affiliate, and subsequently, from the affiliate to the incumbent without a reduction in employment standards or organizational representation.

With adequate accounting safeguards in place, two-way transfer rights do not raise any problems concerning discrimination or cross-subsidization.

IV. Other Proposals to Encourage Deployment on a Reasonable and Timely Basis of Telecommunications Capability to All Americans

Section 706 calls on the Commission to adopt measures to encourage the deployment of advanced technologies to all Americans. CWA agrees with the Alliance for Public Technology that the Commission should adopt pro-active policies to ensure deployment of advanced technologies to serve communities in which the private market, absent these incentives, would not, or would be slow to, invest. Specifically, CWA supports the following APT proposals:

- Adjust the productivity index to accelerate incumbent LEC infrastructure investment for advanced telecommunications capabilities. CWA supports APT's proposed to condition an adjustment of approximately .05% on a showing by the incumbent LECs that they have met specific network investment goals to serve residential consumers with advanced

networks. The Commission's social compact network upgrade policy for cable operators provides precedent for this proposal.¹⁰

- Establish a federal/state policy framework to encourage communities to aggregate demand for technology applications, which creates a "demand pull" basis for deploying infrastructure to the home. Such a policy framework would provide impetus to community partnerships that would demonstrate demand for such technologies in underserved communities.¹¹

V. Conclusion

The Commission's advanced services affiliate option would not lead to the goals of Section 706 to encourage deployment of advanced technologies to all Americans. Rather, it would serve to fragment the public switched network into the "old" voice network with carrier-of-last resort obligations serving all Americans and the "new" advanced services affiliate serving the high-end of the market with advanced telecommunications capability. It deprives the incumbent LEC, the only carrier with a ubiquitous network serving all Americans, of the advantages of scale and scope necessary to support the huge capital investment required to provide advanced telecommunications capabilities to all Americans. Furthermore, the separate affiliate

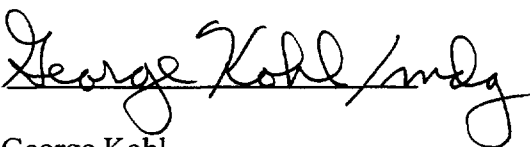
¹⁰ Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, February 18, 1998, 29-32.

¹¹ *Id.*, 34-40.

requirement could serve as a barrier to worker career opportunities as technology and the market shift from the voice to the data network.

Thus, CWA encourages the Commission to shift the balance in its proposed structural safeguards so that the incumbent and affiliate need not maintain two separate and distinct occupational workforces to perform operating, installation, and maintenance functions on what is essentially one network. Accounting safeguards are sufficient to protect against the Commission's concerns regarding cross-subsidization and discrimination. Finally, the Commission should, at a minimum, adopt rules that protect the right of employees for two-way transfers across corporate entities throughout the life of the affiliate, with no reduction in employment standards.

Respectfully Submitted,

By 

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Communications Workers of America

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